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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

BRIAN F. ROGERS, Plaintiff and Appellant, v. ROBERT HALF INTERNATIONAL, INC., Defendant and Respondent.	A151655 (City & County of San Francisco Super. Ct. No. CGC16551854)

Plaintiff Brian Rogers sued defendant Robert Half International, Inc., alleging race and age discrimination and failure to prevent discrimination. The trial court granted summary judgment in favor of defendant. On appeal, plaintiff argues the trial court erred in: (1) concluding defendant met its burden of producing a legitimate, nondiscriminatory reason for not considering plaintiff for a position and concluding plaintiff did not produce any evidence of race or age discrimination; (2) granting defendant's motion before he completed discovery and before the Equal Employment Opportunity Commission (EEOC) completed its investigation of his complaint against defendant; (3) denying, in part, plaintiff's motion to compel discovery; and (4) refusing to allow plaintiff to amend his complaint. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In mid-November 2015, plaintiff responded to one of defendant's job postings by submitting a resume. Plaintiff's resume stated he was a "G/L Accountant" for Centium, Inc., from 2002 to the present. A staffing executive for defendant, Doran Ingalls,

contacted plaintiff and asked him to come to defendant's San Francisco office for an interview. In an email to confirm the interview, Ingalls told defendant to bring three references, one of which had to be from his "most recent supervisor or client."

Ingalls interviewed plaintiff in late November 2015. Plaintiff brought no references to the interview. At the interview, plaintiff told Ingalls that Centium, Inc. was a company he founded and that he was the sole employee. Ingalls thought plaintiff's resume was misleading because plaintiff was not merely a "G/L Accountant" at Centium, Inc.; rather, as the owner and sole employee, he would have held all positions in the company.

About two weeks after the interview, plaintiff emailed Ingalls and Ingalls's supervisor, Sean Pacheco, complaining he had not been contacted for any job openings. In that email, plaintiff responded to Ingalls's attempts to obtain references from him by stating defendant already had his references from the time he worked with defendant in the past. The references plaintiff spoke of were references he provided when he applied to and worked with defendant previously around the mid-1990s.

Ingalls responded to plaintiff via email on the same day. Ingalls told plaintiff that, to be considered for any openings, he needed to provide a minimum of two references, one from his most recent employer, and a revised resume regarding his job duties at Centium, Inc. Ingalls said he had no records of plaintiff's prior employment with defendant, and was unsure what references plaintiff was referring to. Plaintiff never sent Ingalls updated references or an updated resume. In mid-February 2016, plaintiff filed a discrimination charge with the EEOC.

Plaintiff sued defendant in superior court in September 2016. His complaint alleged causes of action for race and age discrimination and failure to prevent discrimination in violation of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12940, subds. (a), (k)), and race and age discrimination in violation of public policy. Defendant filed a motion for summary judgment that plaintiff opposed. The trial court granted defendant's motion and denied plaintiff's request to amend his complaint. Plaintiff appealed.

DISCUSSION

A. The Grant of Summary Judgment

1. Governing Law and Standard of Review

In the context of summary judgment in an employment discrimination case, "the employer, as the moving party, has the initial burden to present admissible evidence showing either that one or more elements of the plaintiff's prima facie case is lacking or that the adverse employment action was based upon legitimate, nondiscriminatory factors." (*Hicks v. KNTV Television, Inc.* (2008) 160 Cal.App.4th 994, 1003 (*Hicks*); see *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355 (*Guz*) [a prima facie case of discrimination generally can be established by showing: "(1) [the plaintiff] was a member of a protected class, (2) [the plaintiff] was qualified for the position he [or she] sought . . . , (3) [the plaintiff] suffered an adverse employment action, such as . . . denial of an available job, and (4) some other circumstance suggests discriminatory motive"].) "If . . . the motion for summary judgment relies in whole or in part on a showing of nondiscriminatory reasons for the [adverse action], the employer satisfies its burden as moving party if it presents evidence of such nondiscriminatory reasons that would permit a trier of fact to find, more likely than not, that they were the basis for the [action]." (*Kelly v. Stamps.com Inc.* (2005) 135 Cal.App.4th 1088, 1097–1098 (*Kelly*).)

Where an employer meets it initial burden by setting out evidence of a nondiscriminatory reason for the adverse employment action, the employee "then has the burden to produce 'substantial evidence that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or evidence the employer acted with a discriminatory animus, or a combination of the two, such that a reasonable trier of fact could conclude the employer engaged in intentional discrimination.' " (*Hicks*, *supra*, 160 Cal.App.4th at p. 1003.) "The plaintiff's evidence must be sufficient to support a reasonable inference that discrimination was a substantial motivating factor in the decision. [Citations.] The stronger the employer's showing of a legitimate, nondiscriminatory reason, the stronger the plaintiff's evidence must be to create a

reasonable inference of a discriminatory motive." (*Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1158–1159 (*Featherstone*).)

We review an order granting summary judgment de novo. (*Guz*, *supra*, 24 Cal.4th at p. 334.) "In determining whether [the foregoing] burdens were met, we must view the evidence in the light most favorable to plaintiff, as the nonmoving party, liberally construing [his] evidence while strictly scrutinizing defendant's." (*Kelly*, *supra*, 135 Cal.App.4th at p. 1098.)

2. Analysis

In support of its motion for summary judgment, defendant presented evidence of a non-discriminatory reason for not hiring plaintiff, i.e., plaintiff's failure to provide references and an updated resume as requested. Thus, as stated above, to avoid summary judgment, plaintiff had the burden of producing " 'substantial evidence that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or evidence the employer acted with a discriminatory animus, or a combination of the two, such that a reasonable trier of fact could conclude the employer engaged in intentional discrimination.' " (*Hicks*, *supra*, 160 Cal.App.4th at p. 1003.) Plaintiff fails to show he carried that burden.

Plaintiff does not point to any evidence in the record disputing defendant's stated nondiscriminatory reason for not hiring him, or to any evidence that defendant acted with discriminatory animus. Plaintiff does not claim he provided references or an updated resume as requested. Instead, he insists neither of those requests was warranted because he already provided defendant his current resume (though it did not list all of his job titles and job duties at Centium, Inc.) and also previously provided references at the time he applied to work with defendant around the mid-1990s (though he did not identify them to Ingalls). Plaintiff's mention of outdated references, however, did not satisfy defendant's reasonable request for a recent reference. Moreover, plaintiff's disagreement with the need to provide any further references and a revised resume is not evidence that defendant acted with discriminatory animus, and it does not alter the fact that plaintiff did not provide either after being requested to do so. Notably, plaintiff was asked to provide

references at least twice, once before his interview with Ingalls. (*Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1005 [employee must do more than simply "raise triable issues of fact concerning whether the employer's reasons for taking the adverse action were sound"].)

Because the record is lacking in any evidence supporting a reasonable inference of intentional discrimination,[1] we conclude the trial court did not err in granting the motion for summary judgment. (*Guz*, *supra*, 24 Cal.4th at p. 362; see *Featherstone*, *supra*, 10 Cal.App.5th at p. 1166 ["Where . . . a plaintiff cannot establish a claim for discrimination, the employer as a matter of law cannot be held responsible for failing to prevent same"].) Additionally, we note that the trial court granted summary judgment on plaintiff's cause of action for race and age discrimination in violation of public policy in part because plaintiff cited no authority showing such a claim exists when there has been no termination of an existing employment relationship. On appeal, plaintiff fails to address this or cite authority controverting it. (*Bains v. Moores* (2009) 172 Cal.App.4th 445, 455 [" ' "[appellate] review is limited to issues which have been adequately raised and briefed" ' "].)

B. The Timing of Defendant's Motion for Summary Judgment

Plaintiff next claims reversal is warranted because the trial court "made a decision on highly incomplete information" insofar as it decided the summary judgment motion before the discovery deadline and before the EEOC completed its investigation. Plaintiff,

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[1] One of the documents that plaintiff filed in support of his opposition to the summary judgment motion was his own declaration, but he did not cite to his declaration in his separate statement, did not designate it to be included in the appellate record, and did not cite to it in his appellate brief. There is nothing in the record indicating that the trial court even considered it. (Compare *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335 [" 'This is the Golden Rule of Summary Adjudication: if it is not set forth in the separate statement, *it does not exist*' "] with *Castillo v. Glenair, Inc.* (2018) 23 Cal.App.5th 262, 283 [trial court has discretion to consider evidence not included in the moving party's separate statement and to grant summary judgment despite an inadequate separate statement].) We therefore analyze the ruling on the motion without it.

however, makes the argument on appeal in a cursory manner, without reasoned argument accompanied by citations to authority. Moreover, he neglects to show he raised this issue below, such as by asking for a continuance to obtain necessary discovery. Plaintiff has thus forfeited review of this contention. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 (*Badie*) [failure to provide reasoned argument and citations to authority waives point on appeal]; *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846 [failure to raise point in trial court precludes its consideration on appeal]; Code Civ. Proc., § 437c, subd. (h); *Denton v. City and County of San Francisco* (2017) 16 Cal.App.5th 779, 791.)

C. Plaintiff's Motion to Compel

Plaintiff argues the trial court erred in denying his motion to compel responses to his request for production of documents, set one. Specifically, he claims the court denied his "request to seek a racial and gender composition of RHI's candidate and internal employee workforce" and denied his "ability to seek electronic mail communication" from defendant, which "would have been both compelling and revealing about [defendant]'s conduct and policies."

Again, plaintiff fails to adequately develop this argument. He does not identify the specific requests for production at issue in this claim; rather, his opening brief inadequately cites to the page range covering his entire request for production of documents, set one. (*American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 284 ["block-page references present difficulties because the appellate court is unable to evaluate which facts contained on those pages support the party's position"].) He also cites no authority in support. (*Badie, supra*, 67 Cal.App.4th at pp. 784–785.)

Even if we were willing to assume plaintiff is taking issue with the trial court's rulings on his request for production of documents, set one, numbers 1, 2, 8, and 11 through 16—which most closely fit the descriptions of the requests for production that plaintiff discusses in his appellate brief—plaintiff fails to show the trial court abused its

discretion.[2] (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 [review of a discovery order is for abuse of discretion].) A party moving to compel further responses to a production demand must show good cause justifying the discovery sought. (Code Civ. Proc., § 2031.310, subd. (b)(1).) "[T]hat burden is met . . . by a fact-specific showing of relevance." (*Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.)

Here, each of the foregoing requests was patently broad and plaintiff fails to demonstrate that he showed good cause below by a fact-specific showing of relevance. It is unclear from the record what plaintiff's arguments were below as no record of the oral proceedings concerning the motion to compel are included in the appellate record. Further, plaintiff's declaration in support of his motion to compel contained no allegations about why he was seeking these records. In light of these deficiencies, we cannot conclude the trial abused its discretion. Additionally, plaintiff fails to present a

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[2] Request numbers 1 and 2 sought *all* emails sent to and from Ingalls's computer, and to and from Pacheco's computer, since their employment with defendant dating back to 2012 and 2005, respectively. The trial court denied the motion to compel regarding these requests, sustaining defendant's objections that the requests were overbroad and insufficiently specific, and that they violated third party privacy rights.

Request number 8 sought all documents "pertaining to an ethnic breakdown of candidates sent on job assignments by [defendant] to local employers classified by race, age, starting pay, and ending pay by ethnicity of each candidate." Request numbers 11 through 14 sought records about the total number of African-Americans and Latinos who received jobs through defendant's San Francisco office, and the number who were assigned to jobs by Ingalls since April 2012. Request number 15 sought records about the total number of African-Americans who were over 40 years old who received jobs through defendant's San Francisco office, and request number 16 sought the names of African-American candidates who receive assignments through defendant. The trial court granted the motion to compel regarding request numbers 8, and 11 through 15, in part, limiting the discoverable documents to those within four years preceding the filing of the complaint and to the San Francisco office. The trial court denied the motion to compel regarding request number 16, sustaining defendant's objections that the requests were overbroad and insufficiently specific, and that they violated third party privacy rights.

developed argument regarding prejudice. (Code Civ. Proc., § 475; *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105–106 (*Paterno*).) We thus reject this claim.

D. Plaintiff's Request for Leave to Amend

In the body of his opposition to the motion for summary judgment, plaintiff requested leave to amend to correct any deficiencies in the complaint. The trial court, however, denied the request on the grounds that plaintiff failed to explain what his proposed amendments were or how they would remedy the deficiencies that led to its granting of the summary judgment motion. Plaintiff now suggests this was error.

Because this argument is undeveloped, unaccompanied by citations to the record, and unaccompanied by authority, it is not properly raised on appeal and is subject to forfeiture. (*Badie, supra*, 67 Cal.App.4th at pp. 784–785; *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 979; *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 51.) Even if we were to consider it properly presented, we would find no abuse of discretion. (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1162–1163.) Courts have the power to allow amendments to pleadings at any time before or after commencement of trial "in the furtherance of justice." (Code Civ. Proc., § 576.) But here we decline to find an abuse of discretion because plaintiff neglected to explain the contents and timeliness of his proposed amendments to the trial court (and to us), and failed to address how they would have furthered justice. (*Willemsen v. Mitrosilis* (2014) 230 Cal.App.4th 622, 634; *Eng v. Brown* (2018) 21 Cal.App.5th 675, 707.) Moreover, plaintiff's failure to show prejudice from the trial court's ruling compels rejection of his claim. (Code Civ. Proc., § 475; *Paterno, supra*, 74 Cal.App.4th at pp. 105–106.)

DISPOSITION

The judgment is affirmed. Defendant shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

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Fujisaki, J.

WE CONCUR:

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Siggins, P. J.

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Petrou, J.

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